ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	) RM-8303
Petition For Rulemaking To Determine	)
The Terms and Conditions Under	)
Which Tier 1 LECs Should Be Permitted	)
To Provide InterLATA Telecommunications	)
Services	)
	)

REPLY COMMENTS OF SPRINT

Sprint Communications Company L.P. hereby replies to the Initial Comments of Ameritech, the Utilities Telecommunications Council ("UTC"), and MFS filed in the above-captioned petition for rulemaking. The Petitioners, five Regional Bell Operating Companies (Bell Atlantic, BellSouth, Nynex, Pacific Telesis, and Southwestern Bell) ("RBOCs"), requested, inter alia, that the Commission institute a rulemaking "to determine the appropriate terms and conditions under which the Bell Companies should be permitted to provide interLATA telecommunications services" (RBOC Petition p. 1). Ameritech, UTC and MFS urge the Commission to accede to the RBOC Petitioners' request for a rulemaking. Sprint disagrees. Together with the majority of parties filing Initial Comments in response to the RBOC petition,[1] Sprint believes, for reasons explained below, that the

[1] See Initial Comments of Allnet Communications Service, Centex Telemanagement, CompTel, LDDS Communications, MCI and WilTel. Sprint did not file Initial Comments.

initiation of a rulemaking to consider the terms and conditions for RBOC entry into the interLATA market is, at this time, premature and would likely result in the useless expenditure of scarce resources which, given current stringencies, the Commission can ill afford.

I. THE COMMISSION CANNOT REALISTICALLY CONSIDER THE TERMS AND CONDITIONS THAT SHOULD ACCOMPANY RBOC ENTRY INTO THE INTERLATA MARKET UNTIL SUCH TIME AS THE DECREE COURT OR CONGRESS DECIDES TO LIFT THE MFJ RESTRICTION PREVENTING SUCH ENTRY.

The RBOC Petitioners are prevented from entering the interLATA market under the terms of the Modified Final Judgment ("MFJ") which they, along with AT&T and the Department of Justice, entered into as a means of resolving the Department's 1974 antitrust complaint against the former Bell System. Notwithstanding the RBOC Petitioners' exhortations to the Commission to "retake the policy initiative" and "recapture its statutory mandate to oversee competition in telecommunications" (RBOC Petition p. 2), the Commission cannot itself undertake to lift the MFJ interLATA restriction. Rather, the removal of such restriction must be left either to the decree Court (subject, of course, to the supervision of higher Federal courts), or, if it is disposed to intervene by enacting legislation, to the Congress.

If, or when, the decree Court or the Congress decides to act to lift or amend the MFJ restriction on RBOC interLATA service, it will presumably provide guidance as to how this is to be accomplished and what conditions, if any, are to be imposed on the RBOCs. The RBOCs appear to recognize that

their entrance into the interLATA market raises serious competitive concerns, and that a decision on their entry is unlikely to be disposed of as a simple "yes or no" matter. The RBOC Petitioners' request that the Commission establish "terms and conditions" governing RBOC entry into the interLATA market is, at least in part, an effort to allay such competitive fears. It may well be that in lifting the MFJ restriction, the decree Court or the Congress would find it appropriate, or even necessary, to itself address a whole range of competitive concerns including, for example, questions such as:

- o whether RBOC entrance into the interLATA market should be conditioned upon the removal of all de jure restrictions on local or intraLATA competition;
- o whether the RBOCs should be required to provide interLATA service through a separate subsidiary;
- o whether RBOCs should be allowed to combine with or acquire the interLATA operations of other RBOCs;
- o whether the RBOCs should be allowed to combine their interLATA operations with those of existing interLATA carriers and, if so, under what conditions;
- o whether the RBOCs should be allowed to provide access service to themselves under flexible (customer-specific) tariffs;
- o whether the RBOCs should be allowed to provide interLATA access to their competitors under tariffs which contain volume discounts and where the relevant volumes would, in turn, be based upon total inter- and intraLATA traffic (including local);
- o whether the RBOCs should continue to be allowed to control the network architecture for the provision of 800 data base and LIDB services;
- o whether the RBOCs should be allowed to control the data bases needed to provide Intelligent Network services; and

- o whether BellCore should be allowed to continue in its present form as an entity jointly funded by the seven RBOCs.

To some extent, the answers to these and other questions may be left entirely to the Commission's discretion. But, it is also likely that either the Court or Congress will seek to resolve some questions on its own and to provide guidance, suggestions, instructions, etc., as to other questions which would establish the parameters for any regulatory solution adopted by the Commission.

Thus, a decree Court decision or legislation enacted by Congress to lift or amend the MFJ interLATA restriction (along with any accompanying legislative history) will inevitably provide information critical to a further rulemaking by the Commission to establish the "terms and conditions" under which the RBOCs will compete in the interLATA market. There is no way that the Commission can regulate in a vacuum. A rulemaking held without knowledge of or reliance upon the intentions of the decree Court or Congress in rescinding the MFJ restriction will very likely prove to be of little or no value.

There is also a timing problem. There is no evidence, and indeed no claim by the RBOC Petitioners, that removal of the MFJ restriction either by the decree Court or Congress is imminent. Whatever the pace of intraLATA competition, there is a real problem that the record established by the Commission in any rulemaking held at this time will become stale by the time the RBOCs are permitted to provide interLATA service. If it is assumed that the competitive picture for

local service and local access is changing rapidly--and such change would, other things being equal, tend to favor early BOC entry into the interLATA market--any record established in a rulemaking held at this time will rapidly become stale. Ordinarily, different regulatory solutions are required to meet changing competitive conditions. On the other hand, if it is assumed that the competitive picture for local service and local access is changing slowly, RBOC entry into the interLATA market may as a consequence be delayed for a considerable period and, once again, the record established in any rulemaking held at this time will grow stale.

Accordingly, absent some exigency which precludes such a course, it would appear a far more efficient, and a far more prudent, use of the Commission's resources, for the Commission to hold a rulemaking to establish the basis for RBOC competition in the interLATA market after, rather than before, the MFJ restriction prohibiting RBOC entry is lifted or amended. As Sprint shows next there is no such exigency.

II. THERE ARE NO PUBLIC INTEREST CONCERNS WHICH WOULD COMPEL THE COMMISSION TO HOLD A RULEMAKING ON RBOC ENTRY INTO THE INTERLATA MARKET AT THIS TIME.

Basically, the RBOC Petitioners argue that there is a compelling competitive need for their immediate entry into the interLATA market which the Commission, if it is to act in the public interest, must facilitate in any way possible. The argument of the RBOC Petitioners is grounded on their dismal view of the progress made by competition thus far in the long distance market. According to the RBOC Petitioners,

"[d]espite the Commission's best efforts, long distance competition has not developed as fully as it should have" (p. 10). This is demonstrated, or so the RBOC argument runs, by AT&T's continuing large market share of about 60 percent; by the failure of interstate carriers to decrease charges as low as could be expected under competition; and, by the statements of certain investment analysts that "[t]he [long distance] industry is settling down as a 'nice, stable oligopoly...'" (p. 13). The RBOCs recommend as a cure for this stagnation "an infusion of new competition from seven large, experienced competitors," namely themselves, which "could rapidly lead to lower prices and an explosion of new services" (p. 14).

This view of interLATA competition is sufficiently iconoclastic as to be largely confined to the petitioning RBOCs themselves. No other party filing Initial Comments--including the parties which supported the requested rulemaking--supported the petitioning RBOCs' view of interLATA competition. The Initial Comments point out, and Sprint agrees, that the views of the petitioning RBOCs as to the state of competition are totally at odds with those espoused by the Commission for many years now.[2] Sprint also agrees with the refutation in some of the Initial Comments of the various arguments advanced by the RBOCs.

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[2]See Initial Comments of Allnet, p. 3, n. 8; CompTel, pp. 7-8; MCI, pp. 2-3.

First, AT&T's large market share is indeed reflective of continuing market power, but that market share is gradually declining. This decline, along with other factors, would strongly suggest that long distance competition is continuing to progress. Further, competition will only continue to progress as remaining structural barriers to competition (such as lack of a system of billed party preference) are removed. Second, there is really no question that interLATA rates have decreased as a result of growing competition and, in many cases, these decreases have been precipitous. The petitioning RBOCs' argument to the contrary is based on a NERA study which arrives at the wrong result by simply ignoring the substantial discounting off generally tariffed rates widely resorted to by AT&T and its competitors. Third, the views of the industry analysts must be considered in context. Their opinions (no matter how deeply or honestly held) are intended to recommend specific stocks. These opinions have a commercial purpose which limits their reliability as a guide to the course of industry development or as a basis for regulation.

Moreover, the RBOC Petitioners' insistence that their provision of interLATA service is vital to the success of interLATA competition is flawed as a matter of simple economic logic. If the interLATA market is not a natural monopoly, competition should take hold and grow with or without the RBOCs' participation. The RBOCs have nothing unique to add to the competitive balance in the intraLATA market which other potential entrants lack. The technological know-how to provide interLATA service is widely available and there are

certainly large companies, with far more competitive experience than the RBOCs, which are fully capable of entering the interLATA market.

On the other hand, if the interLATA market is a natural monopoly, the view suggested by the author of the RBOC Petition in a separate study,[3] there is no point in letting the RBOCs enter unless they are able to supplant AT&T--presumably by combining into a single entity--[4] as the natural monopolist. If the interLATA market is a natural monopoly under AT&T's control, RBOC entry into the interLATA market is misguided. The RBOCs would simply be squeezed out by AT&T and the resulting losses might well have to be borne, at least in part, by local ratepayers. If it is an RBOC combination, not AT&T, which is most likely to monopolize the

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[3] See, Huber, Kellogg and Thorne, The Geodesic Network II: 1993 Report on Competition in the Telephone Industry, pp. 3.29-3.35. The authors state

> The access premium paid by AT&T is not related to any competitively important difference in the quality of access supplied. The premium is nothing but a direct subsidy, maintained by the FCC to handicap AT&T and boost its competitors.
>
> * * *
>
> Eliminate the subsidy -- as was supposed to happen, according to the divestiture decree, on September 1, 1991 -- and competition would collapse immediately.

[4] The competitive market for interLATA telecommunication is nationwide. A single RBOC would therefore suffer from the same disadvantages as any other AT&T rival in approximately six-sevenths of the relevant competitive market. This would strongly suggest that if other rivals cannot survive against AT&T in the interLATA market, neither can a single RBOC.

interLATA market, RBOC entry would, here again, obviously not bring effective competition. It would simply be a question of whether an RBOC monopoly would supplant an AT&T monopoly. If the RBOCs are successful, the end result would not be interLATA competition, but a reassembly of the various pieces of the old Bell System. Moreover, the interim competitive battle against AT&T--even if won by the RBOCs--may (just as with an RBOC defeat) well result in losses to be borne by local ratepayers.

In short, basic economic principles belie the RBOC Petitioners' assertion that their participation in the interLATA market place is vital to competition. Competition in the interLATA market place is either viable or not. And, this remains true regardless of whether the RBOCs are allowed to enter the interLATA market.

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September 15, 1993

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Comments" of Sprint Communications Company L.P. was sent via first-class mail, postage prepaid, on this the 15th day of September, 1993, to the below-listed parties:

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September 15, 1993